

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RUSSELL SCOTT FARIA,

Plaintiff,

v.

CASE NO. 4:16-cv-01175-JAR

SERGEANT RYAN J. MCCARRICK,
DETECTIVE MICHAEL MERKEL,
DETECTIVE PATRICK HARNEY,
PROSECUTING ATTORNEY LEAH
ASKEY,

Defendants.

**DEFENDANTS' JOINT OPPOSITION TO PLAINTIFF'S MOTION FOR LEAVE
TO FILE A SINGLE OMNIBUS MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT AND TO DAUBERT
MOTIONS TO EXCLUDE EXPERTS, AND TO FILE SINGLE STATEMENT OF
ADDITIONAL FACTS, AND FOR THE MEMORANDUM IN OPPOSITION TO
EXCEED THE 15 PAGE LIMIT**

Before this Court is Plaintiff's motion to file a single "Omnibus Response" to the three separate motions for summary judgment filed by the various separate defendants and the two *Daubert* motions filed jointly by the Defendants and for other relief, (Doc. No. 98). Defendants McCarrick, Merkel, Harney, and Askey ("these Defendants") oppose the relief requested by Plaintiff and respectfully pray that the Court deny the motion because the relief sought would unfairly prejudice the Defendants while creating unnecessary confusion, burden, and delay. In support of their opposition, these Defendants state as follows:

1. Plaintiff's motion asks the Court to allow him to file a single, 150-page or longer "Omnibus Response" to the three separate motions for summary judgment filed

by (a) Defendants McCarrick, Merkel, and Harney, (b) Defendant Askey, and (c) Defendant Lincoln County, *and* to the two *Daubert* motions filed jointly by the Defendants to exclude two expert witnesses identified by Plaintiff.

2. Further, Plaintiff has requested leave to file a single “Statement of Additional Facts” in response to all of the Defendants’ motions for summary judgment.

3. Finally, Plaintiff has asked for leave to exceed the 15-page limit set forth in Local Rule 7-4.01(D).

4. Nothing in the Rules of Civil Procedure or in the Court’s Local Rules even contemplates, much less permits, the filing of a single response to multiple motions filed by different defendants seeking different relief.

5. The relief requested by Plaintiff would unnecessarily and unfairly prejudice the Defendants. Among other unfair prejudice, the Defendants would be required to guess, speculate, or wonder which portion of a 150-page memorandum requires their specific response. Conversely, the Defendants would be required to respond to every argument and contention in a 150-page memorandum to ensure that their replies are thorough and complete; such an unduly burdensome project would surely, and quite reasonably, require a considerable extension of time for the Defendants to complete.

6. The unfair prejudice to the Defendants, (and the likelihood that the Court would find a 150-page memorandum in response to five different motions as confusing, ambiguous, and unwieldy as the Defendants would), far outweighs the mere convenience and strategic advantage sought by Plaintiff. No judicial economy is likely to be realized if Plaintiff files an “Omnibus Response,” whereas it is most likely to create unnecessary confusion, aggravation, and delay.

7. Similarly, the Defendants should not be required to respond to a single, global “statement of additional facts,” and for the same reasons: such would be confusing, unduly burdensome, and unfairly prejudicial to the Defendants. In accord with this argument, Local Rule 4.01(E) requires that “[t]hose matters in dispute shall be set forth with specific references to portions of the record, where available, upon which the opposing party relies” and to “note for all disputed facts the paragraph number from movant’s listing of facts.” The filing of a single “statement of additional facts” as against all of the Defendants would unquestionably defy the spirit and logic of this Rule.

8. These Defendants respectfully suggest that Plaintiff should – and should be required to – file his separate response to each of the summary judgment motions and to each of the *Daubert* motions the same as any other plaintiff in any other case. Plaintiff is the master of his own case and Plaintiff chose to sue each of the Defendants; Plaintiff’s own convenience and strategic considerations must not now be allowed to overwhelm the process to which the Defendants are each entitled in defense of the claims against them.

9. These Defendants do not anticipate their objection to any reasonable request Plaintiff might make to file separate responses in excess of the 15-page limit or for additional time to file such responses. Through counsel, these Defendants so informed Plaintiff before he filed the present motion.

10. Plaintiff’s requests to file an “Omnibus Response” to the three separate motions for summary judgment plus the two *Daubert* motions is without any support in the rules; it would create needless confusion and ambiguity for the Defendants and the Court; and, it would unfairly prejudice the Defendants in significant and important ways. For these reasons, the Court should deny Plaintiff’s motion in its entirety.

WHEREFORE, Defendants McCarrick, Merkel, Harney, and Askey respectfully request that the Court deny Plaintiffs Motion for leave to file a single omnibus memorandum in opposition to Defendants' Motions for Summary Judgment and Motions to Exclude Expert Testimony, to file a single Statement of Additional Facts, and to exceed the 15-page limit.

Respectfully Submitted,

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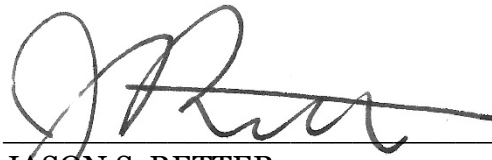
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CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2018, a true and accurate copy of the foregoing was filed electronically using the Court's e-filing system, which sent notification of the filing to:

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A handwritten signature in black ink, appearing to read 'J. Retter', is written over a horizontal line.

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